IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4795 of 2007()

CRIME NO.309 OF 2007 OF AMBALAPUZHA POLICE STATION

: PETITIONER:

K. BHASKARAN, S/O. RAGHAVAN,
ANAVELIL, NEERKUNNAM, ALAPPUZHA, SECRETARY,
S.N.D.P. SAKHA YOGAM, NEERKUNNAM BRANCH.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENTS:

S.I. OF POLICE, AMBALAPUZHA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4795 of 2007

Dated this the 14th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in the case. The crime is registered, inter alia, under Sections 420 r/w 34 I.P.C. The crux of the allegation is that the petitioner as the Branch Secretary of the S.N.D.P had conducted a financial activity of collecting deposits from the various depositors in the name of `Chathayam Fund'. This activity was carried on without any requisite legal authority. The gullible members of the public were led to believe that huge return can be obtained by making such deposits. The petitioner and the co-accused knew fully well that they were not competent to conduct any such financial activity. The subscribers are not given back their amounts. Crime has been registered on the basis of the complaint received from one of the depositors. Many other complaints have also been received. Comprehensive investigation is in progress. So far the petitioner and the co-accused have not been able to show the police any materials that the branch has authority to conduct such a business. In short, the allegation is that the accused persons have mislead the members of the public and had induced them to part with money in an activity to conduct which they have no

legal authority whatsoever. Altogether there are 3 accused persons. Both co-accused have already been arrested. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to him, the branch has the requisite authority to conduct the business. No material whatsoever is even suggested to exist to this Court to justify such assertion. The learned counsel for the petitioner then submits that the matter had come up before this Court and this Court by Annexure-B order had permitted the petitioner and the co-accused to make attempts to discharge the liabilities to the various subscribers. From this the counsel builds up an argument that it is evident that there is no element of cheating whatsoever. The learned counsel for the petitioner finally submits that at any rate it is not necessary to insist on the arrest and incarceration of the petitioner. Subject to appropriate conditions, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that a number of people of the locality have been defrauded and deceived by the activities of the accused persons. Though the accused persons keep on asserting that they have the requisite legal authority to collect

deposits, nothing has been produced to show such authority if any. The investigation so far reveals that the accused persons have no such authority whatsoever. This is not a fit case where the petitioner is entitled to the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate like his co-accused and seek regular bail in the ordinary course.

4. I have considered all the relevant inputs. It is not necessary for me to embark on a detailed discussion about the acceptability of the allegations and the credibility of the data collected. I take note of the fact that no specific material is even alleged to exist to show that the accused persons have any legal authority to conduct the activity of soliciting deposits from the members of the public. I need only mention that I am no satisfied that this is a fit case where the extraordinary equitable discretion can or deserves to be invoked in favour of the petitioner. This is a fit case where the petitioner must certainly surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. The learned counsel for the petitioner submits that the petitioner is entitled to act in terms of Annexure-B order. The learned Public Prosecutor submits that no one is raising any objections to the

petitioner acting in terms of Annexure-B order. In fact, the complaint of the depositors and the prosecution is that the petitioner is not acting in accordance with Annexure-B order.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-